

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JORGE GARCIA and MICHELLE ENRIQUEZ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	No. 3:13-cv-00252
	§	
SLM CORPORATION,	§	
	§	
Defendant.	§	

Plaintiffs, Jorge Garcia and Michelle Enriquez (“Plaintiffs”), through the undersigned attorney, alleges the following against, Defendant, SLM Corporation, commonly known as Sallie Mae (“Defendant”):

INTRODUCTION

1. Count I of Plaintiffs’ Complaint alleges that Defendant negligently, knowingly and/or willfully violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331.
3. Defendant conducts business in the State of Texas establishing personal jurisdiction.
4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiffs are natural persons residing in El Paso, El Paso County, Texas.
6. Defendant is a business entity with an office located in Wilkes-Barre, Pennsylvania.
7. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

8. Jorge Garcia and Michelle Enriquez are married, and co-signed for a private student loan with Defendant.

9. On or around May 9, 2013, Plaintiff, Jorge Garcia, spoke with Defendant's employee, "Ms. Johnson," and asked Defendant to stop placing calls to his cellular telephone number.

10. On or around May 15, 2013, Plaintiff, Michelle Enriquez, spoke with Defendant's employee, "Chris," and asked Defendant to stop placing calls to her cellular telephone number.

11. Despite Plaintiffs' request to stop calling their cellular telephone numbers, Defendant continued to call Plaintiffs using an auto-dialer to their cellular telephone numbers at 915-245-78xx and 915-245-77xx.

12. When Defendant called Plaintiffs, it called them from telephone numbers (302) 283-4044, (302) 348-9984, (317) 348-9985, (756) 283-3176, and (765)283-3253, which are telephone numbers belonging to Defendant.

13. All of Defendant's telephone calls to Plaintiff were placed using an automatic telephone dialing system ("auto-dialer").

14. Since May 9, 2013, Plaintiff, Jorge Garcia, received approximately one-hundred - seventeen (117) or more telephone calls from Defendant, which Defendant placed using an auto-dialer, as follows:

- a. May 15, 2013 – 8 calls;
- b. May 16, 2013 – 4 calls;
- c. May 17, 2013 – 1 call;
- d. May 18, 2013 – 2 calls;
- e. May 19, 2013 – 1 call;
- f. May 20, 2013 – 5 calls;
- g. May 21, 2013 – 3 calls;

- h. May 22, 2013 – 8 calls;
- i. May 23, 2013 – 5 calls;
- j. May 24, 2013 – 8 calls;
- k. May 25, 2013 – 2 calls;
- l. May 26, 2013 – 1 call;
- m. May 27, 2013 – 2 calls;
- n. May 28, 2013 – 4 calls;
- o. May 29, 2013 – 5 calls;
- p. May 30, 2013 – 3 calls;
- q. May 31, 2013 – 6 calls;
- r. June 1, 2013 – 1 call;
- s. June 2, 2013 – 1 call;
- t. June 3, 2013 – 7 calls;
- u. June 4, 2013 – 7 calls;
- v. June 5, 2013 – 7 calls;
- w. June 6, 2013 – 8 calls;
- x. June 7, 2013 – 4 calls;
- y. June 8, 2013 – 2 calls;
- z. June 9, 2013 – 1 calls;
- aa. June 10, 2013 – 6 calls;
- bb. June 11, 2013 – 5 calls;

15. Since May 15, 2013, Plaintiff, Michelle Enriquez, received approximately eighty-nine (89) or more telephone calls from Defendant, which Defendant placed using an auto-dialer, as follows:

- a. May 21, 2013 – 1 call;
- b. May 22, 2013 – 6 calls;
- c. May 24, 2013 – 4 calls;
- d. May 27, 2013 – 1 call;
- e. May 28, 2013 – 3 calls;
- f. May 29, 2013 – 5 calls;
- g. May 30, 2013 – 1 call;
- h. May 31, 2013 – 4 calls;
- i. June 3, 2013 – 6 calls;
- j. June 18, 2013 – 6 calls;
- k. June 19, 2013 – 5 calls;
- l. June 20, 2013 – 7 calls;
- m. June 21, 2013 – 6 calls;
- n. June 22, 2013 – 3 calls;
- o. June 23, 2013 – 3 calls;
- p. June 24, 2013 – 7 calls;
- q. June 25, 2013 – 5 calls;

- r. June 26, 2013 – 8 calls; and
- s. June 27, 2013 – 8 calls;

16. Plaintiffs never provided Defendant with any consent, explicit, implied, or otherwise, to call their cellular telephone and/or to receive Defendant's calls using an automatic telephone dialing system.

17. Even if such consent was previously given, Plaintiff, Jorge Garcia, revoked such consent on or around May 9, 2013, and Plaintiff, Michelle Enriquez, revoked such consent on or around May 15, 2013.

COUNT I
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

18. Plaintiffs incorporate by reference the forgoing Paragraphs 1-16.

19. Defendant's actions alleged *supra* constitute numerous negligent violations of the TCPA, entitling Plaintiffs to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiffs to an award of \$1,500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiffs, Jorge Garcia and Michelle Enriquez, respectfully request judgment be entered against Defendant, SLM CORPORATION, for the following:

21. Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

22. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C);

23. All court costs, witness fees and other fees incurred; and

24. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE Plaintiffs, Jorge Garcia and Michelle Enriquez, demand a jury trial in this cause of action.

Dated: August 8, 2013

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: /s Ryan Lee

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